NOMINATIONS—INTERSTATE COMMERCE COMMISSION

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

FIRST SESSION

ON

NOMINATIONS OF

MALCOLM M. B. STERRETT AND FREDERIC N. ANDRE, TO BE MEMBERS, INTERSTATE COMMERCE COMMISSION

OCTOBER 7, 1981

Serial No. 97-64

Printed for the use of the
Committee on Commerce, Science, and Transportation

U.S. GOVERNMENT PRINTING OFFICE

86-368 O WASHINGTON : 1981

5261-84

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NOMINATIONS—INTERSTATE COMMERCE COMMISSION

WEDNESDAY, OCTOBER 7, 1981

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, D.C.

The committee met at 8:30 a.m., in room 235, Russell Senate Office Building, Hon. Barry Goldwater presiding.

OPENING STATEMENT BY SENATOR GOLDWATER

Senator GOLDWATER. The committee will come to order. I want to apologize for the size of the committee this morning. For many Senators, the Sun hasn't come up yet.

This morning, we are gathered to hear statements by Malcolm Sterrett and Frederic Andre for appointments to the Interstate Commerce Commission. Now, you will excuse my putting you on together. The questions I have to ask will be asked of both of you separately. I don't intend to take too long, because we have business out of town.

I have a statement by the Honorable Dan Quayle of Indiana on behalf of Mr. Andre that I would like to submit for the record. I also have a statement of my own on behalf of Mr. Andre.

If there was ever the right man in the right place at the right time, it would have to be Mr. Frederic N. Andre, who has been nominated to be a member of the Interstate Commerce Commission.

I first became acquainted with Mr. Andre during my campaign for the presidency in 1964. Over the years, I have concluded that he shares my opinions, and the opinions of the President, about what the proper role of Government should be in the economic affairs of our Nation.

This man's educational qualifications are outstanding. He holds the masters degree from Stanford Business School and a law degree from Valparaiso University Law School. Clearly, the nature and scope of the commissioner's duties demand versatility in law, finance, and economics. Fred Andre is uniquely qualified in that respect.

While Fred has a unique educational background, he is no stranger to the administrative aspects of the transportation world and the regulatory apparatus. He gained valuable insight and experience into regulatory matters as staff director of the Indiana Public Service Commission and as Chief Deputy Commissioner of the Indiana Bureau of Motor Vehicles.

And, Mr. Chairman, Mr. Andre has first-hand, practical experience in the trucking business. He worked his way through college as a moving van operator, having logged over a half-million miles.

In short, Mr. Andre is a well-educated man with extensive administrative and practical experience in almost all the areas where a commissioner of the ICC needs to be knowledgeable. His record of accomplishment says more than I could, so I conclude by heartily commending him to you and encouraging your concurrence in his nomination.

[The statement follows:]

STATEMENT OF HON. DAN QUAYLE, U.S. SENATOR FROM INDIANA

Mr. Chairman and members of the committee, it is a pleasure and privilege for me to take this opportunity to express my personal support for Fred N. Andre of Paoli, Indiana, who has been nominated by President Reagan to serve as a member of the Interstate Commerce Commission.

Fred Andre will bring to this important position a strong background of experience in the areas of administration, finance, economics and transportation.

He served as Chief Deputy Commissioner of the Indiana Bureau of Motor Vehicles beginning in 1971. There, he initiated administrative reforms and streamlining efforts to help create in Indiana one of the nation's most efficient motor vehicle regulatory agencies. Later, he served as staff director for the Indiana Public Service Commission. Under his stewardship, that agency soon ranked first in the nation for its performance and regulatory climate.

Fred earned his law degrees from Valparaiso School of Law. He served for a period as Research Director for the scholarly Intercollegiate Studies Institute, based in Indianapolis. Under his leadership, the Institute became a respected intellectual resource center.

Fred Andre has the support of many of our colleagues in the Senate, including a number who serve on this distinguished committee. I commend my fellow Hoosier, Fred Andre, to you and am fully confident he merits your unanimous endorsement. Thank you.

Senator GOLDWATER. Mr. Andre, do you have anything in particular you would like to say for yourself at this point?

STATEMENT OF FREDERIC N. ANDRE

Mr. ANDRE. I have no opening statement.

Senator GOLDWATER. Anything that's on your mind about your appointment?

Mr. ANDRE. Well, Senator, it's an honor and pleasure to be here. I consider it a privilege to have this opportunity to serve my country as a member of the Interstate Commerce Commission. My candidacy, perhaps, has a degree of uniqueness to it inasmuch as I have some rather extensive practical transportation experience, in addition to my academic and regulatory background.

[The biographical sketch and answers to questions of the committee follow:]

BIOGRAPHICAL SKETCH OF FREDERIC N. ANDRE

Name: Frederic N. Andre.

Address: P.O. Box 68, Hospital Road, Paoli, Indiana 47454.

Date and place of birth: June 25, 1933; Grand Rapids, Michigan.

Marital status: Single.

Children: None.

Education: Calvin College, 1951-1955; A.B., June 1955; Valparaiso School of Law, 1956-1959; L.L.B., June 1959; and Stanford Business School, 1960-1962; M.B.A., June 1962.

Employment record: United Van Lines, Inc., St. Louis, Mo.; moving van operator, 11/52-6/69 (intermittent); Intercollegiate Studies Institute, Indianapolis, Ind.; economic research and education, 7/62-9/63; Center for American Studies, Burlingame, Calif.; economic research and education, 10/63-3/64; Self-employed consultant, Grand Rapids, Mich.; 4/64-6/69; Indiana Public Service Commission, Indianapolis, Ind.; staff director, 7/69-1/71; Indiana Bureau of Motor Vehicles, Indianapolis, Ind.; chief deputy commissioner, 2/71-9/72; American Medical Association, Atlanta, Ga., regional field director, 9/72-6/74; Medical Liability Commission, Chicago, Ill., executive director, 7/74-4/77; and Self-employed consultant, Paoli, Ind.; 5/77 to present.

Government experience: State of Indiana, Public Service Commission; staff director; State of Indiana, Bureau of Motor Vehicles; chief deputy commissioner; and Office of the President Elect, Interstate Commerce Commission Transition Team; team leader, 1980-1981.

Memberships: National Association of Regulatory Utility Commissioners, member; American Association of Medical Society Executives, member; Phi Alpha Delta Legal Fraternity (Halleck Chapter), secretary; Rotary International, member; Fraternal Order of Police, Lodge 86, member; International Brotherhood of Teamsters, Grand Rapids, Michigan, Local 406, member; Detroit, Michigan, Local 243, member; Foundation of Law and Society, director and chairman; The Philadelphia Society,

member; American Conservative Union, director; American Studies Institute, director; Intercollegiate Studies Institute, member; and Valparaiso Student Bar Association, president.

Political affiliations and activities: American Medical Political Action Committee, field director, 1972; Reagan for President, 1976 volunteer; Crane for President, 1978–1979 volunteer; Reagan for President, 1980 volunteer; Republican Party of Indiana, $400.

Honors and awards: Relm Foundation fellowship for post-graduate study in economics, 1968.

Questions of the Committee and the Answers Thereto

Questions by the Majority

Question 1. Why do you think you are qualified to serve as an ICC Commissioner?

Answer. I am qualified for the Office of Commissioner by virtue of my economic, financial and legal training, as well as my practical experience in government and the transportation industry.

Question 2. Do you consider yourself primarily a regulator or a deregulator of the transportation industry and what are your reasons?

Answer. I have a deep-seated respect for the benefits conferred upon our society by the market economy in the last two hundred years. I believe that the price system operating in the general environment of our private property system not only is a prerequisite for maintaining and improving our cherished privileges of political and civil liberty, but that it is also the fundamental dynamic for enhancing the standard of living of all Americans.

In 1887 our surface transportation resources were, in large part, made subject to a scheme of direct economic regulation to, among other things, alleviate certain market power abuses that had arisen. Progressively, in the ensuing years, changing economic conditions and circumstances have combined to render this protective regulatory apparatus increasingly less necessary. Today, in 1981, it is obvious to most informed observers that it is in the public interest to substantially relax many of the constraints, particularly in the areas of entry, rates and service. This belief is that both shippers and carriers, as well as the general public, would benefit from the inherent efficiency afforded by a more price-oriented system. To effectuate this, Congress, after much careful analysis and thoughtful deliberation, has wisely chosen to redirect the Interstate Commerce Commission toward a more competitive surface transportation policy and an increased infusion of market discipline into those areas of greatest public benefit.

I believe that if my nomination to the Commission is approved by the Senate, I will be arriving at a time when this new direction is still in its early stages. The challenge involved during my proposed tenure will be to implement the will of Congress in this increasingly competitive direction in a forthright, skillful, effective and responsible manner.

Question 3. As an I.C.C. Commissioner, what would you hope to accomplish?

Answer. I hope that during my tenure as an I.C.C. Commissioner I will make a contribution to the Commission's full and flexible implementation of the Interstate Commerce Act, as amended, in the public interest.

Question 4. In view of the I.C.C.'s limited budget, the agency clearly must make the best use of the resources available to it. (a) What do you see as the agency's top priorities? (b) Are there any regulatory activities which the agency should not be involved in? (c) If so, can the agency discontinue these activities on its own, or must Congress act to relieve it of such responsibilities?

Answer. (a) In the motor carrier field the top priority is to implement the will of Congress as it relates to synchronizing the most efficient and effective combination of entry relaxation with concomitant pricing flexibility. This must be accomplished concurrent with maintaining and enhancing adequacy of motor carrier services to small communities. In the railroad field the top priority is to implement the will of Congress as it relates to improving the industry's internal and external capital-generating capabilities. This is to be accomplished through increased rate and plant rationalization balanced by adequate provision for the needs of shippers in small communities and by a case-by-case upholding of the rights and legitimate interests of captive shippers and others vulnerable to market power abuse. In the household goods field the top priority is to implement the will of Congress as it relates to pricing practices, timeliness of service, and the handling of claims.

(b) There may be regulatory activities in which the agency should not be involved. It is my understanding that the agency is currently reviewing all its regulations

with a view toward eliminating those regulations which serve no useful purpose. I fully support such efforts.

(c) To the extent that Congress has given the agency the discretion and power to discontinue certain unnecessary regulatory activities it should do so, but always in the public interest. To the extent that Congress has not given this power, I would be duty bound to recommend appropriate legislation in those instances where I might feel regulatory activities should be discontinued.

Question 5. One of the goals of the Staggers Act was to permit railroads to improve their financial viability. (a) What do you believe the I.C.C. is doing or should be doing to help ensure that this goal is met? (b) In commenting on this question, please specifically mention actions the I.C.C. is or should be taking with respect to Conrail.

Answer. (a) The I.C.C. is in the process of streamlining its procedures governing rail matters. It should continue to do so to enable the railroads to better rationalize their own systems consistent with the Congressional intent. Concurrently, the Commission should proceed, on a case-by-case basis, mindful of the plight of and the Congressional concern for captive shippers.

(b) With respect to Conrail, I respectfully draw the Committee's attention to Section 1156 of N.E.R.S.A. (Northeast Rail Service Act). This action is designed to facilitate Conrail's abandonment of track in the northeast corridor. The Commission should do its utmost to carry out the spirit of N.E.R.S.A.

Question 6. A second goal of the Staggers Act was to reduce regulation and permit the marketplace to regulate rail service wherever possible. What do you think the I.C.C. is doing or should be doing to implement this goal?

Answer. In addition to the recently adopted TOFC/COFC exemption ruling, the I.C.C. currently has under consideration another proposal to exempt other affiliated movements. The recent exemption for rail transport of fresh fruits and vegetables is now in effect, and the Commission should continue to aggressively search out other areas where the marketplace is preferable to regulation.

Question 7. The Staggers Rail Act also gave the I.C.C. broad flexibility to make changes in areas of regulation not specified in the Act. What areas do you think the I.C.C. should explore to further relieve the railroad industry from economic regulation?

Answer. One area deserving of consideration is the elimination of the burdensome adjudicative process in instances where adjudication is unnecessary; new rail construction is a case in point. Another area for further relief of the railroad industry from economic regulation is in the alleviation of unnecessary reporting and record retention requirements; substantial railroad savings could be achieved if the Commission were to limit its reporting and record retention requirements to only those matters necessary for the Commission to fulfill its Congressionally mandated function.

Question 8. Do you think the I.C.C. has a role to play in helping the rail industry to be more innovative and responsive to the marketplace, or do you think that is the responsibility of rail management?

Answer. Initiative for rail industry innovation and marketplace responsiveness should rest with rail management.

Question 9. (a) Do you believe a railroad should continue to operate a branch-line even if that line is heavily cross-subsidized and shows no signs of becoming self-sufficient? (b) What alternatives would you suggest for shippers on such lines?

Answer. (a) As a general rule it should not. However the Staggers Act provides sufficient flexibility for the Commission to recognize critical situations of public need and to address itself to them on a case-by-case basis.

(b) Among the alternatives available for shippers caught in this undesirable circumstance would be contract rates or shipper surcharges, fair-price acquisition and rail banking, or, in the extreme case, direct subsidization.

Question 10. Merger activity is prevalent in the rail industry today. Such activity has the potential to both increase operating efficiencies and to decrease competition. Do you believe consolidation of the nation's healthy railroads should be allowed to continue?

Answer. I think each merger is peculiar to itself and each proposal demands a serious case-by-case scrutiny to ensure that the Congressional objective of rail plant rationalization is achieved.

Question 11. What is your position on the I.C.C.'s enforcement role in violations of the rail and motor carrier statutes and regulations?

Answer. With the I.C.C. budget undergoing progressively more stringent cutbacks, it is important for the Commission to begin to prioritize its enforcement activities in accord with the intent of Congress. Further, whether in rail or in motor carrier enforcement, the Commission should give serious consideration to curtailing or

eliminating the less important or least cost-efficient ones, especially those that may be found to be unsupported by a clear Congressional mandate.

Question 12. During the debate on the recently approved Conrail legislation, there was a consensus that Conrail could never reach financial viability if it was required to pay lifetime labor protection to its employees. The I.C.C. now requires other railroads to pay six years of labor protection to employees deprived of employment because of an abandonment or merger. Do you think such protection is reasonable, and should continue to be imposed?

Answer. By statute, railroad employees are guaranteed a certain measure of terminal pay protection. The Commission, however, is authorized to provide a greater degree of protection if circumstances so warrant. In the rare case where the Commission chooses to go beyond the statutorial minimum, it must make certain that the special circumstances do in fact exist. If we are going to mandate a benefit, we should at least be aware of what it will cost, and how it will impact upon the railroad's posture.

Question 13. Would you like to see the intercity bus industry deregulated, and if so, to what extent?

Answer. I have no preconceptions with regard to regulation or deregulation of the intercity bus industry. I am aware that legislation is now pending. My chief concern in this area is in the maintenance of a responsible bus service to the American public.

Question 14. There is a fear among those concerned with rural areas that by deregulating the bus industry many communities will lose their only means of transportation. Do you see this as a problem?

Answer. As a long time resident of small and rural communities and an occasional user of bus services, I am not sure the fear is well-grounded. In my experience, rural bus service has, in general, been minimal and sporadic under the current regulatory scheme. However, to the extent to which the I.C.C. makes recommendations to the Congress with respect to bus legislation, I would propose that the Commission give serious consideration and concern to studying the potential impact of deregulation on rural areas.

QUESTIONS BY THE MINORITY

Question 1. (a) What specific transportation experience would you bring to the position of I.C.C. Commissioner? (b) What would you hope to accomplish in this position?

Answer. (a) I will bring to the Interstate Commerce Commission my record of numerous years and over 500,000 miles of direct, practical transportation experience. As an irregular routes motor common carrier driver, I engaged in the transport of new uncrated furniture, automobiles, steel, electronic equipment and general freight. My primary activity in this field occurred as a cross-country owner-operator of a household goods moving van. My other motor carrier activities included hauling agricultural commodities, and a wide range of motor freight terminal duties such as sales, dispatching, billing, claims, hiring, LTL load consolidation, safety, switching, vehicle repair, and city pickup and delivery.

(b) I hope that during my tenure as an I.C.C. Commissioner I will make my contribution to the Commission's full and flexible implementation of the Interstate Commerce Act, as amended, in the public interest.

Question 2. (a) How would you characterize your regulatory philosophy? (b) How would you seek to carry out this philosophy if confirmed as Commissioner? (c) In this regard, how do you view the future role of the Commission in promoting the regulatory reform efforts of Congress? (d) Are there directions in which you believe the Commission should be moving?

Answer. (a) I have a deep-seated respect for the benefits conferred upon our society by the market economy in the last two hundred years. I believe that the price system operating within the general environment of our private property system not only is a prerequisite for maintaining and improving our cherished privileges of political and civil liberty, but that it is also the fundamental dynamic for enhancing the standard of living of all Americans.

In 1887 our surface transportation resources were, in large part, made subject to a scheme of direct economic regulation to, among other things, alleviate certain market power abuses that had arisen. Progressively, in the ensuing years, changing economic conditions and circumstances have combined to render this protective regulatory apparatus increasingly less necessary. Today, in 1981, it is obvious to most informed observers that it is in the public interest to substantially relax many of the constraints, particularly in the areas of entry, rates, and service. This belief is that both shippers and carriers, as well as the general public, would benefit from the inherent efficiency afforded by a more price-oriented system.

To effectuate this, Congress, after much careful analysis and thoughtful deliberation, has wisely chosen to redirect the Interstate Commerce Commission toward a more competitive surface transportation policy and an increased infusion of market discipline into those areas of greatest public benefit.

I believe that if my nomination to the Commission is approved by the Senate, I will be arriving at a time when this new direction is still in its early stages. The challenge involved during my proposed tenure will be to implement the will of Congress in this increasingly competitive direction in a forthright, skillful, effective and responsible manner.

(b) By an unrelenting day-by-day search for those areas in surface transportation where, in accord with the Congressional intent, I can exercise my lawfully delegated authority to effectuate a substitution of competition for regulation.

(c) The Commission must interpret reasonably, and implement rationally, the provisions of the Interstate Commerce Act, as amended. It must continually review, and, where necessary, modify its regulatory activities to ensure that these are consistent with the recently enacted legislation.

(d) While working within the framework of its legislative mandate to safeguard the public against unreasonable, discriminatory or destructive competitive practices, the Commission must seek, to the maximum extent possible, to actively promote competition, and wherever appropriate, to simply remove itself from economic activity to allow willing buyers of surface transportation the unfettered freedom of bargaining with willing sellers of surface transportation in arriving at mutually agreeable prices and services to be rendered.

Question 3. (a) What priorities do you believe the Commission should be establishing in the area of transportation regulation? (b) Are there specific issues which you believe should be addressed by the Commission with respect to the various modes? (c) Are there areas in which the Commission should become more involved or less involved?

Answer. (a) In the motor carrier field the top priority is to implement the will of Congress as it relates to synchronizing the most efficient and effective combination of entry relaxation with concomitant pricing flexibility. This must be accomplished concurrent with maintaining and enhancing adequacy of motor carrier services to small communities. In the railroad field the top priority is to implement the will of Congress as it relates to improving the industry's internal and external capital-generating capabilities. This is to be accomplished through increased rate and plant rationalization balanced by adequate provision for the needs of shippers in small communities and by a case-by-case upholding of the rights and legitimate interests of captive shippers and others vulnerable to market power abuse. In the household goods field the top priority is to implement the will of Congress as it relates to pricing practices, timeliness of service, and the handling of claims.

(b) A number of major issues warrant the Commission's immediate attention. In the motor carrier area, for example, in addition to enhancing minority participation specifically, the Commission should examine fully the impact of regulation upon the interrelationship between regulated carriers, owner-operators and firms engaged in private carriage to ascertain how these components of our transportation network can function in the most efficient and economical manner. In the rail area, the statutorily mandated guidelines relative to rates on the movement of coal must be developed expeditiously. With respect to all modes, the Commission should continue to explore and to encourage efficient intermodal practices; streamline or eliminate, as may be necessary, regulations which are burdensome or wholly unnecessary; and actively enlist the cooperation of state regulatory officials in achieving the aims of the Act. I recognize that the Commission has already taken steps relative to these areas, and that aspects of these issues are subjects of pending proceedings. For this reason I am reluctant to address the merits of any particular proceeding. It is my full intention to pursue the objectives enunciated in the Act, as amended.

(c) The Commissions' involvement in regulatory areas must be measured and prioritized in light of the objectives of its statutory mandate, and the extent of its resources. To whatever extent current regulatory activities are inconsistent with the recent legislation, or are excessive or ineffective, they must be stopped. In the past, many I.C.C. activities have served to severely constrict competition and business initiative in the surface transportation field. This trend must now be reversed to the fullest extent possible, consistent with the public interest.

Question 4. The Commission has an important responsibility to implement the Motor Carrier Act of 1980 and the Staggers Rail Act of 1980. (a) How do you perceive the intent of Congress in the passage of this legislation? (b) If confirmed as Commissioner, what affirmative steps would you take to ensure that the intent of Congress is being carried out?

Answer. (a) The 1980 legislation reflects Congress' determination that the earlier conditions which warranted relatively broad regulatory constraints in the past have largely disappeared. In the transportation industry an increasing degree of reliance is now to be placed upon a freely rotating market system with an accompanying deemphasis on government impediments to its efficiency.

(b) If confirmed as a member of the Commission, I will strive to implement the provisions of the Act, as amended, through the rulemaking and adjudicative process. Moreover, I will seek to ensure that any of the Commission's incremental actions are held within their intended purpose. I will invite the comments of the general public, shippers, members of the industry and other concerned groups.

Question 5. Much attention has been focused on the Commission's current implementation of the Motor Carrier Act. Specifically, Members of this Committee have raised concerns about certain Commission actions having the effect of restricting entry, which is clearly contrary to the Committee's express commitment to freer entry. (a) What is your position on this issue? (b) How do you perceive the direction in which the Commission has been, or should be, moving in the area of entry?

Answer. (a) Congress' overall intent is to relax entry standards in conjunction with its enhancement of pricing flexibility. This was done to expand and increase the efficiency of the motor carrier industry. I fully support and will work to achieve this goal.

(b) Soon after the adoption of the 1980 Motor Carrier Act, the Commission instituted a number of proceedings designed to facilitate eased entry into the industry, and further, to broaden the scope of the authority for motor carriers. It is my understanding that, as a consequence, requests for operating authority have been granted at an increased and substantially higher level. As a Commissioner, I would seek to ensure that the trend toward freer entry is pursued to the fullest extent intended by Congress, and that this trend would be unmistakably recognizable in the actions of the Commission.

Question 6. Specific concern has been raised about the Commission seeming to require that shipper support be shown for every aspect of an application for motor carrier authority, a requirement which is clearly contrary to Congressional intent. What is your view of the Commission's actions in this regard?

Answer. I interpret the Commission's current policy governing this area as requiring an applicant to make a "representative showing" in support of his or her proposal, and that this proposal need not include shipper testimony. To my knowledge, this policy remains in force. If confusion and uncertainly over this matter have arisen in the light of recent Commission actions, I will make early inquiry and take whatever course of action is in my power to conform the Commission's actions to the Congressional intent.

Question 7. (a) How do you view the impact of the Motor Carrier Act on small shippers and small communities? (b) Are there actions which the Commission should be taking in this regard?

Answer. (a) The intent of Congress relative to small shippers and small communities is clearly spelled out in the national transportation policy. A recent Commission interim report indicates that, during the six month period following the passage of the 1980 Motor Carrier Act, service to small communities was not measurably altered; to the extent that there has been change, the report indicates it has been positive. The findings contained in several studies independently prepared by the D.O.T. reach the same general conclusions. This would appear to support the view that increased reliance on the marketplace is not disruptive, but may impact favorably on small communities.

(b) I believe it imperative that the Commission expeditiously pursue this study to its conclusion, and, in accordance with its findings, make appropriate recommendations to Congress.

Question 8. Concerns have been raised that the Commission has been slow to implement the Staggers Act. (a) What is your reaction to this concern, in light of the ongoing rulemakings at the Commission pursuant to this legislation? (b) Are there other actions which the Commission should be taking to further promote this Act?

Answer. (a) I believe the Staggers Act should be implemented as swiftly as possible for the sake of the rail industry and shippers dependent upon it. Concerns along this line have not been addressed to me to date. Due to the urgency involved in this matter, however, I intend to speedily familiarize myself with the key pending issues.

(b) I think it is fundamental that the Commission maintain open avenues of communication with the public to ensure that concerns such as this are brought to its attention.

Question 9. During the Congressional deliberations on the Staggers Act, much attention was focused on the rates associated with the movement of coal. (a) What is your philosophy with respect to coal rates? (b) Are you satisfied with the Commission's actions in this area?

Answer. (a) I believe that coal rates should be high enough to maintain and expand the rail system to the extent necessary to handle the increased usage of coal. At the same time, in light of the national energy policy, rates should remain low enough so as not to inhibit the use of coal.

(b) It is my understanding that the I.C.C.'s coal rates guidelines proceeding has been pending for several years. It's time that the Commission brings this difficult and extremely significant matter to a conclusion.

Question 10. (a) what is your view of the common carrier obligation? (b) How do you perceive the Commission's role in defining this obligation under the Rail and Motor Carrier Acts?

Answer. (a) The common carrier obligation is a principle rooted in common law, designed basically to ensure that persons holding out service to the public do so in a non-discriminatory fashion.

(b) At issue today, at least with respect to motor common carriers, is the extent to which, in light of the 1980 legislation and prevailing economic and industrial practices, the Commission should require carriers to adhere to this obligation. I believe it would be inappropriate to discuss this question in greater detail inasmuch as it is the subject of a proceeding currently pending before the Commission.

Question 11. In recent months, the Commission has indicated a need to increase its enforcement efforts. How do you view the Commission's role in this area? Are increased enforcement efforts necessary?

Answer. With the I.C.C. budget undergoing progressively more stringent cutbacks, it is important for the Commission to begin to prioritize its enforcement activities in accord with the intent of Congress. Further, the Commission should give serious consideration to curtailing or eliminating the less important or least cost-efficient ones, especially those that may be found to be unsupported by a clear Congressional mandate.

Question 12. A principal focus of all regulatory reform efforts has been procedural reform, namely reduction in unnecessary delays and procedures. Have the Commission's activities been adequate in this area?

Answer. The 1980 legislation imposes strict time frames within which the Commission must act on adjudications. I am informed that the Commission has revised its procedures to comply with the legislation. I perceive expeditious case-handling as a high-priority matter and will seek to insure that statutory deadlines are met. I believe it it essential that the bureaucratic foot-dragging which characterized several major railroad proceedings in the past not be repeated.

Senator GOLDWATER. Mr. Sterrett, do you have anything that you would like to say?

STATEMENT OF MALCOLM M. B. STERRETT

Mr. STERRETT. Senator, I have prepared a short statement which I have submitted to the committee. I won't bother to read it, but I would like to submit it for the record, if I could.

Senator GOLDWATER. It will be made a part of the record.

[The statement, biographical sketch, and answers to questions of the committee follow:]

STATEMENT OF MALCOLM M. B. STERRETT

Mr Chairman and members of the Committee, this is an exciting and important period in the Interstate Commerce Commission's history. With the passage of the Motor Carrier Act and the Staggers Rail Act in the last Congress, the rail and motor carrier industries have been presented an opportunity to reap important benefits. These benefits should result in improved transportation services to the public as well as a financially sound transportation industry. However, it is the responsibility of the Commission to implement these Acts in a manner which will produce the expected benefits.

The message sent to the Interstate Commerce Commission by the 96th Congress is clear: competition in the transportation industry should be maximized and regulation minimized. I share that view. It is of the utmost importance that the significant deregulation provided in the Motor Carrier Act and the Staggers Rail Act be given a full and fair test in the implementation of these Acts by the Commission. I believe that the result will be as Congress intended—a healthy, stable, efficient transporta-

tion industry which provides competitive, economical, and reliable service to all of the shipping public.

It is my understanding that the experience with deregulation to date, as examined by the Commission, the Department of Transportation and others, confirms that the favorable expectations of Congress are generally being realized. It is also my understanding that the fears expressed by many, such as loss of service to small communities, are not being realized. While I believe such fears are unwarranted, potential adverse effects of deregulation need to be monitored carefully by the Commission.

Aside from the issue of the proper implementation of the recent changes to the Interstate Commerce Act, the Commission faces in the near future numerous other critical issues. These range from the fuel surcharge program, to major railroad mergers, to the profitability benchmark for Conrail. I believe that my experience at the Interstate Commerce Commission, the Senate Commerce Committee, and the U.S. Railway Association provides a useful background for addressing these matters.

Finally, while the Commission is obligated to implement the law as it is, it is my strong belief that it also has an obligation to help formulate national transportation policy. Policy must evolve as conditions change, and the Commission must be prepared to recommend to the Congress ways in which transportation regulation can be further reformed to the mutual benefit of both the users and providers of transportation services. If confirmed as a Commissioner, I would expect to have frequent contacts, both formal and informal, with the members of the Committee and its staff in this endeavor.

I am grateful for the opportunity to serve on the Interstate Commerce Commission and I look forward to the challenge of contributing to a revitalized and improved transportation system, as well as to a continued relationship with this Committee.

Biographical Sketch of Malcolm M. B. Sterrett

Name: Malcolm McCurdy Burdett Sterrett.

Address: 4516 Wetherill Road, Bethesda, Md. 20816.

Date and place of birth: September 21, 1942—Norwalk, Conn.

Marital status: Married, Joan Place DeChant.

Names and ages of children: Anne Burdett Sterrett, age 3.

Education: Princeton University, 1960-1964, B.A., June 1964; The Hague Academy of International Law, 1966, and Vanderbilt University, School of Law, 1964-1967 J.D., June 1967.

Employment record: Attorney-Advisor, Interstate Commerce Commission, Washington, DC, November 1967-May 1972; Minority Staff Counsel, U.S. Senate Committee on Commerce, Washington, DC, May 1972-January 1976; Minority Staff Director and Counsel, U.S. Senate Committee on Commerce, Science, and Transportation, Washington, DC, January 1976-January 1980; General Counsel, United States Railway Association, Washington, DC, January 1980-November 1980; and Vice President-Law, United States Railway Association, Washington, DC, November 1980-present.

Government experience: Interstate Commerce Commission, 1967-1972; U.S. Senate Committee on Commerce, Science, and Transportation, 1972-1980; United States Railway Association, 1980-present.

Memberships: District of Columbia Bar Association.

Political affiliations: Registered as a member of the Republican Party in the District of Columbia, 1967-1978 and in Maryland since 1978.

Questions of the Committee and the Answers Thereto

Question 1. Why do you think you are qualified to serve as an ICC Commissioner?

Answer. During my entire professional career I have dealt with a broad range of transportation regulatory and policy issues. I can bring to the ICC a perspective gained from employment on both the Commission staff and on a Congressional committee having oversight responsibility for the agency. By virtue of my experience with the Senate Commerce Committee and training as a lawyer, I would be particularly sensitive to the concerns of Congress in implementing the Interstate Commerce Act. Finally, I believe that I have the ability to address the complex and important transportation issues confronting the ICC with an open mind and to reach decisions in a careful, impartial, and thorough manner.

Question 2. Do you consider yourself primarily a regulator or a deregulator of the transportation industry and what are your reasons?

Answer. I consider myself a deregulator with respect to the transportation industry. In my opinion, the marketplace is the best and most cost-effective regulator of the industry. Only where market forces are ineffective should government regulation come into play. I believe that a vigorously competitive industry will result in the availability of the best service at the most reasonable price to the benefit of shippers and ultimate consumers.

Question 3. As an ICC Commissioner, what would you hope to accomplish?

Answer. In the short term, I would hope to accomplish rapid, full, and proper implementation by the Commission of the Motor Carrier Act and the Staggers Rail Act. Over the long term, it would by my intention as a Commissioner to play an active role in the formulation of an evolving national transportation policy. In that context, I would seek ways to revitalize and improve both the transportation industry and the manner in which it serves the public.

Question 4. In view of the ICC's limited budget, the agency clearly must make the best use of the resources available to it. What do you see as the agency's top priorities? Are there any regulatory activities which the agency should not be involved in? If so, can the agency discontinue these activities on its own, or must Congress act to relieve it of such responsibilities?

Answer. As I see it, the top priorities of the Commission in the near future are as follows: (1) Making adjustments to carry out its necessary functions with fewer resources; (2) dealing with significant rail mergers and other proposals designed to reationalize the Nation's rail system; (3) implementing the Motor Carrier Act, the Staggers Rail Act, the Household Goods Act, and, if enacted, bus deregulation legislation; and (4) evaluating the effects of the recent legislation and recommending further legislation when necessary.

There are probably many regulatory activities which the ICC should examine with an eye toward discontinuance. If confirmed, I intend to take a hard look at all of the Commission's activities. Those which provide little or no public benefit should be eliminated.

The courts have recognized that the Congress has delegated broad powers to the independent regulatory agencies, enabling them to alter or eliminate many of their activities by administrative action. On the other hand, much of what the agencies do can be discontinued only by the Congress through statutory change. If there were serious doubt about the Commission's authority to effect a partiuclar change, it would be my inclination to err on the side of caution by seeking Congressional action.

Question 5. One of the goals of the Staggers Rail Act was to permit railroads to improve their financial viability. What do you believe the ICC is doing or should be doing to help ensure that this goal is met? In commenting on this question, please specifically mention actions the ICC, is or should be taking with respect to Conrail.

Answer. In order to improve the financial viability of the rail industry, the Staggers Act provides railroads with greater rate freedom and permits them to use many marketplace tools which they previously were either discouraged or actually prevented from using. These include, among others, joint rate and light density line surcharges, contract rates, and expeditious abandonment procedures. Conrail appears to be making aggressive use of the Staggers Act, having filed 31 commodity surcharges, 43 branch line surcharges, 20 contract rates, and 52 abandonment applications as of August 1981.

These new business tools should make possible improved financial viability for all railroads. It is the Commission's duty to see that the other provisions of the Staggers Act are implemented to the fullest extent possible, and it is my understanding that the Commmission is attempting to do so.

Question 6. A second goal of the Staggers Act was to reduce Federal regulation and permit the marketplace to regulate rail service whereever possible. What do you think the ICC is doing or should be doing to implement this goal?

Answer. Aside from the financial tools provided under the Staggers Rail Act (discussed in the response to question No. 5) and the use of its broadened exemption authority (discussed in the response to question No. 7), the Commission has taken a number of steps to reduce its role in the rail industry. A number of reporting requirements have been modified or eliminated, particularly for the smaller roads. By statute, tariffs are becoming effective on shorter notice, rate changes can be suspended only on limited grounds, and car service orders are reserved for emergency circumstances. Market forces are thus given greater emphasis. Commission compliance with tighter statutory deadlines in rate, merger and abandonment cases has generally been achieved. Further administrative efforts in these areas, as well as refining accounting and costing procedures, should be given high priority.

Question 7. The Staggers Rail Act also gave the ICC broad flexibility to make changes in areas of regulation not specified in the Act. What areas do you think the

ICC should explore to further relieve the railroad industry from economic regulation?

Answer. Under § 10505 of the Interstate Commerce Act, the Commission is charged with exempting rail-related matters from statutory regulation that is found to be unnecessary to carry out the national transporation policy and to be either limited in scope or not needed to protect shippers from the abuse of market power. On a day-to-day basis, exemptions have significantly reduced delays and paperwork for carriers invclved in specific transactions, such as intra-corporate reorganizations, minor abandonments, trackage rights agreements, and temporary service arrangements. In addition, the Commission has exempted from regulation major categories of traffic, such as fresh fruits and vegatables and piggyback movements.

It is my understanding that there are studies available which explore the level of intermodal competitiveness of various commodities and types of service and which calculate the rail share of the transportation of those commodities. I intend to examine those studies in detail to determine what additional commodities or services may be possible candidates for exemption. The views of railroads, shippers, and perhaps others would be beneficial in developing a list of potential exemption candidates.

Question 8. Do you think the ICC has a role to play in helping the rail industry to be more innovative and responsive to the marketplace, or do you think that is the responsibility of rail management?

Answer. The final measure of rail management's ability to innovate and respond to the marketplace is the profit produced by the company. As a general principle, therefore, innovation is primarily the responsibility of rail management, not the ICC. However, unless the Commission, both in its broad policymaking decisions and in its adjudications, clearly and unequivocally expresses its receptivity to innovative railroad proposals, we can never expect to see a high degree of industry innovation. Thus, the Commission bears the responsibility for developing a climate which encourages highly responsive marketplace activity by the railroads.

Question 9. Do you believe a railroad should continue to operate a branch line even if that line is heavily cross-subsidized and shows no signs of becoming self-sufficient? What alternatives would you suggest for shippers on such lines?

Answer. Railroads should not be required to heavily cross-subsidize branch lines which are perennial money-losers. The carrier seeking abandonment, however, should be prepared to show that it has made genuine efforts to achieve profitability.

Shippers located on money-losing rail lines should be given a reasonable opportunity to negotiate subsidy agreements. I would also suggest that they investigate the use of alternate transportation modes since in most instances of rail abandonment, there is intermodal competition already present in the market. Moreover, the Motor Carrier Act greatly facilitates motor carrier entry in markets abandoned by rail carriers. Finally, we have witnessed in recent years the formation of short line railroads, often with local ownership, that have successfully met the needs of shippers and communities on abandoned lines.

Question 10. Merger activity is prevalent in the rail industry today. Such activity has the potential to both increase operating efficiencies and to decrease competition. Do you believe consolidation of the nation's healthy railroads should be allowed to continue?

Answer. Of necessity, rail mergers must be considered on a case-by-case basis. As a general principle, however, the ICC has an important responsibility to strike a balance between the degree of increased operating efficiency which may be achieved through a particular merger and the extent to which the merger may reduce competition to the detriment of other railroads and shippers. In my view, the ICC should look favorably upon mergers which will strengthen the industry while preserving competition.

Question 11. What is your position on the ICC's enforcement role in violations of the rail and motor carrier statutes and regulations?

Answer. I believe that the Commission's enforcement role should focus primarily on areas in which the consumers of transportation services are least familiar with the system and, thus, least able to protect their own interests. Bus passengers and shippers of household goods stand out in this regard. In contrast, commercial shippers of freight, most of whom deal with carriers on a daily basis, generally have the experience necessary to protect themselves against actual or potential abuse. The natural incentives and deterrents of a competitive marketplace, backed by the Commission's determination to pursue those violations that are brought to its attention, provide the most effective overall enforcement mechanism.

Question 12. During the debate on the recently approved Conrail legislation, there was a consensus that Conrail could never reach financial viability if it was required to pay life-time labor protection to its employees. The ICC now requires other

railroads to pay six years of labor protection to employees deprived of employment because of an abandonment or merger. Do you think such protection is reasonable, and should continue to be imposed?

Answer. The imposition of six years of labor protection for rail employees deprived of employment as a result of abandonment or merger is currently required by statute. Whether or not the statutory minimum is reasonable depends upon the circumstances of each situation. The Conrail experience, as well as the collective bargaining process that led to the "Miami Accords" covering the Rock Island and the Milwaukee Road, demonstrate that it is often necessary for the concerned parties to have more flexibility in this area.

Question 13. Would you like to see the intercity bus industry deregulated, and if so, to what extent?

Answer. It seems to me that the bus industry should at least operate in a regulatory environment comparable to that provided the rest of the motor carrier industry by the Motor Carrier Act. I understand that the Commission has submitted a legislative proposal to the Congress that would, to a great extent, accomplish this objective. However, I have not had an opportunity to study this issue in detail and therefore am not in a position to comment on the legislation at this time.

Question 14. There is a fear among those concerned with rural areas, that by deregulating the bus industry many communities will lose their only means of transportation. Do you see this as a problem?

Answer. Similar concern was expressed during the Congressional debate which preceded passage of the Motor Carrier Act of 1980. Preliminary studies of the effect of that Act on the level and quality of freight service to small communities indicate that small communities have not been adversely affected. While these are only early results, I believe they indicate that it is highly unlikely that the transportation industry will engage in wholesale cessations of service. I would anticipate a similar result from the enactment of comparable bus legislation.

Senator GOLDWATER. I will ask these questions for both of you. You can choose up sides and answer in order.

What do you see as the Interstate Commerce Commission's top priorities?

Mr. STERRETT. I think the first priority clearly is the full and complete implementation of the recent deregulation legislation as passed by the last Congress.

Second, the ICC will have to deal with the reduced budgetary constraints. OMB is proposing a considerable reduction for next year, as I understand it.

Third, the ICC must look at how the deregulation has worked, with a view toward further legislation down the road.

Senator GOLDWATER. But you do feel that one of the big jobs is deregulation?

Mr. STERRETT. I certainly do.

Senator GOLDWATER. Not more regulation?

Mr. STERRETT. I couldn't agree with you more.

Senator GOLDWATER. Mr. Andre?

Mr. ANDRE. Yes, Senator, I heartily agree. I concur that the urgent need of the hour is to pursue with vigor the deregulatory pace that has been established; especially with the recent passage of the various acts. I think the challenge is to have as smooth a transition to a market allocation of our surface transportation resources as is possible.

I think the movement of getting from here to there is one which will require a great deal of skill and exercise of responsibility. But certainly, the pace must continue. I consider myself an aggressive relaxer of regulation, and look forward to this opportunity to bring America's surface transportation industry in line with our regular market economy.

Senator GOLDWATER. Both of you gentlemen have had rather extensive backgrounds in transportation, one particularly with

trucking, and one with railroads. So this question, I think, would not cause you any trouble: What do you think the Congress was trying to achieve in passing the Motor Carrier Act?

Mr. STERRETT. Senator, the ultimate goal was to maximize competition in the industry and minimize regulation. To that end, it gave the motor carrier industry a great deal of rate flexibility, but also opened up entry both to new carriers and for existing carriers to expand their operations. I think the intent of Congress was to make the industry as competitive as possible by these two actions.

Senator GOLDWATER. Senator Kassebaum of Kansas.

Senator KASSEBAUM. Thank you. I just wanted to be able to join you to say how very qualified I think both of the nominees are for these important posts. And I have a question to ask.

Senator GOLDWATER. Go ahead.

Senator KASSEBAUM. Mr. Sterrett, since I am very interested in rail transportation and particularly the Rock Island Railroad, because of its importance to Kansas, and your involvement with this committee in rail legislation, I would like to ask you your thoughts on the state of the Rock Island bankruptcy.

We hear frequently that the Trustee has been thwarting efforts to purchase parts of the bankrupt line. The court has found, as you know, that given the liquidation of the estate, that there is no public interest responsibility involved. And I would like to ask you particularly, or Mr. Andre, either one, if you have any thoughts about what the ICC could do to facilitate purchasing parts of the Rock Island Line by other interested buyers, or if there is some means, through legislation, by which we could address public interest responsibility that the Trustee might have, or should have.

Mr. STERRETT. Senator, the issue came to my attention only yesterday. So I am only vaguely aware of the problem. I am not certain that the ICC has any formal role in the negotiation process, or in forcing the negotiation of a purchase by one of these railroads. I think ICC certainly could informally facilitate getting the parties together.

I would be delighted to look into that as soon as I am there, and get back to you. It may well be that legislation would be required to accomplish this end. But I do understand and share your concern.

Senator KASSEBAUM. Do you see that it would facilitate matters if we could, through legislation, require a public interest responsibility?

Mr. STERRETT. Of the Trustee?

Senator KASSEBAUM. Yes.

Mr. STERRETT. Possibly. But frankly, I would like to think about that some more.

Senator KASSEBAUM. You can see that it's of importance to us in Kansas.

It doesn't go to Arizona, does it?

Senator GOLDWATER. We just have mules.

Senator KASSEBAUM. Thank you, Mr. Chairman.

Senator GOLDWATER. Have you finished your answer to my question?

Mr. STERRETT. Yes.

Senator GOLDWATER. And you have not answered yet.

Mr. ANDRE. That's correct, sir. With respect to the Motor Carrier Act, I think Congress sought to deregulate as much as is reasonable and possible to do, particularly in the area of entry, as well as rationalizing the price structure, especially, with regard to the zone of reasonableness, and also to encourage and facilitate proliferation of price-service options. I think that's the key to it.

On this matter of the proliferation of price-service options, I don't think it's so much a concern for us, prospectively that is, as the ICC to ponder at great length on what the price-service options ought to be. Even if we all has the wisdom of Solomon, I don't think we could compete with or exceed the wisdom of the marketplace itself, where willing buyers and willing sellers of surface transportation spontaneously get together on the terms of price and service to be rendered. Furthermore, I think to the extent that collusion in pricing can be reduced, that this is a great contribution to efficiency. So just as the act states, the predicates for the motor carrier field are the promotion of competition and efficiency; and I am wholly in accord with that.

Senator GOLDWATER. You would agree with that act, Mr. Sterrett?

Mr. STERRETT. Yes.

Senator GOLDWATER. I think it's very, very important that members of the Commission have a high regard for the marketplace effect on rates and prices.

This if for both of you: What do you think Congress was trying to achieve in passing the Staggers Rail Act?

Mr. STERRETT. I think one of the keynotes of the act is restoring financial viability to the rail system. In that regard, it gave railroads a tremendous amount of rate flexibility, and also directed the Commission to reduce regulation where possible.

Mr. ANDRE. I agree with that. The concern was and is with the financial viability of the railroads, in particular the railroads' capital-generating capabilities, both internally as well as, ultimately, we would hope, externally; and that this is to be achieved through rate and plant rationalization in every way that is feasible, bearing in mind the concerns of captive shippers and others who perhaps may be subject to market power abuse.

Senator GOLDWATER. Of course, one of the thoughts behind the act was to allow railroads to increase their financial viability. In doing that, we want to apply the other part of that Staggers Act of reduce Federal regulation.

Do you both see that these go hand in hand? You can't create a profitable situation amongst the railroads without lessening Federal pressure; is that correct?

Mr. ANDRE. Yes, Senator.

Mr. STERRETT. Certainly.

Senator GOLDWATER. Thank you.

This question is for both of you. The Staggers Act included specific provisions aimed at improving the financial viability of railroads. One provision allows railroads to raise rates without ICC interference. Another provision directs the ICC to act expeditiously on abandonment applications. As Commissioners, would you gentlemen support these provisions?

Mr. STERRETT. I think they are essential, Senator.

Mr. ANDRE. I concur with that.

Senator GOLDWATER. Again, this question is for both of you. The Staggers Rail Act gave the ICC broad flexibility to reduce or eliminate regulation of the railroad industry. What areas do you think the ICC should be looking at to make such changes?

Mr. STERRETT. Senator, the Staggers Act gave broad authority to the Commission to exempt from regulation matters that did not require regulation under the national transportation policy or to protect shippers. In that vein, the Commission has taken several steps in eliminating regulation from, for example, fresh fruit and vegetable transportation and some trailer and flat car transportation. There are undoubtedly numerous other areas that the Commission ought to be looking at for exemption. One that they are looking at now, which is very controversial, is export coal. However, I am sure that there are many other areas the Commission ought to be considering.

Mr. ANDRE. I think this exemption authority is the key to the situation. This must be done practicably and in a responsible manner. I believe that another area, in addition to those that Mr. Sterrett has mentioned, is the promotion of intermodalism. I believe this is under consideration at the present time. allowing the TOFC/COFC situation to be extended to cases where trucking companies are not necessarily owned by railroads. I think that is definitely worth exploring, and many other areas, of course.

Senator GOLDWATER. I think the deregulation that has covered fruits and vegetables has been very successful. I see no reason why extending that concept wouldn't help everything we do.

Mr. Andre, do you agree that in an entry proceeding a motor carrier can prove public need for its services without any specific showing of shipper support?

Mr. ANDRE. I interpret the current statute to say that a showing of shipper support is not necessary. There must be a representative showing of some sort, but its adequacy is pretty much up to the discretion of the person examining it.

Senator GOLDWATER. That's a broad ground to base application, or acceptance of application, on, I know. Having been on the buying end of shipping, I think it makes sense.

Mr. STERRETT. Senator, the legislative history is quite clear in both the House and Senate. It does not require specific shipper support. You do have to show a public benefit or need, but that can be demonstrated in many other ways. Clearly, shipper support is a good form of evidence, but it is not necessary.

Senator GOLDWATER. Mr. Sterrett, in what ways do you think the ICC can help Conrail meet the profitability test provided for in the Conrail legislation passed in August?

Mr. STERRETT. The Conrail profitability test comes less than 2 years from now. Because of that, I think it is very crucial that the ICC reach decisions rapidly. There may not be anything specific that the ICC can do for Conrail as opposed to all railroads, but clearly, implementing the policy of the Staggers Rail Act to enable railroads to achieve adequate revenues should help Conrail a lot.

In the Northeast Rail Service Act there is also a very automatic abandonment procedure for Conrail. The ICC does not have much of a role in that, but I think that will help, also.

Senator GOLDWATER. As you know, Conrail's not in good shape. It's in very bad shape. And if you can't apply the same reasoning of deregulation or down regulation to them, plus their ability to raise rates on unprofitable traffic, then I am afraid Conrail is heading out the barn. We don't want to see that happen.

Mr. STERRETT. I agree.

Senator GOLDWATER. Do you have any other questions?

Senator KASSEBAUM. No, I don't.

I think that the ICC has a very important role to play at this particular juncture, as we work through the two very major pieces of legislation regarding deregulation of the trucking industry and the rail industry, and know that you have some challenges ahead. I am sure that we as members of the Commerce Committee will look forward to working with you, trying to solve some of the problems in both of those particular pieces of legislation.

Mr. STERRETT. I look forward to maintaining a close relationship with the committee.

Mr. ANDRE. I, likewise, Senator.

Senator GOLDWATER. On behalf of the committee, I want to thank both of you gentlemen for coming this morning.

Senator KASSEBAUM. So early.

Senator GOLDWATER. Thank you, gentlemen, for wanting to serve your country. You are filling a hot spot.

Mr. ANDRE. Thank you, Senator.

Mr. STERRETT. Thank you.

[Whereupon, at 8:50 a.m., the hearing was adjourned.]

[The following information was subsequently received for the record:]

STATEMENT OF JOE COBB, DIRECTOR OF ECONOMIC ANALYSIS, COUNCIL FOR A COMPETITIVE ECONOMY

At this time, the Council for a Competitive Economy wishes to register a strong protest against the direction that the Interstate Commerce Commission has taken since the appointment of Mr. Reese Taylor as Chairman. The Administration was expected to adopt a free market philosophy of government upon taking office, but the exact opposite seems to have occurred at the I.C.C.

The official line of Mr. Taylor's staff is that it is just following the intent of Congress. Before his confirmation hearings, Taylor pledged that he wouldn't try to reverse trucking deregulation, although he said he would like to slow its progress. He wrote last month to one of our members that he is not opposed to deregulation, but that—as an attorney, not an economist—he was just trying to follow proper administrative procedures at the Commission. This is a smokescreen, however, for economic royalism. Instead of granting certificates to new carriers who apply, the new I.C.C. practice is to require formal hearings. The impact of this "proper administrative procedure" is to impose a cost on the entry of new competitors into trucking, by requiring them to retain attorneys and dawdle through the hearings process. Moreover, the burden of proof has again been shifted against the new entrants. A threat has been made that if a certificate is granted for a carrier to operate nationwide, that it will be compelled to operate nationwide. The chilling impact of that threat has not passed unnoticed by smaller carriers who would be unable to serve every small town in America—and who might be hauled before the Commission by vested interests if they should be caught failing to serve every small town in America!

We have learned that the Interstate Commerce Commission, under Mr. Taylor, is planning to devote more of its budget to the enforcement of the Motor Carrier regulations. This is, once again, a veiled threat to use the police powers to shut down *some* carriers (but obviously not others, since the budget is not large enough to police the entire nation). Is this deregulation? Is this the path the President Reagan promised to lead the Nation upon?

There is a serious contradiction in public policy when the Vice President is leading a task force on regulatory reform, proposing among other things to reduce

irrational environmental controls and land-use restrictions, yet Reese Taylor is let loose at the I.C.C. to lead the charge back to the syndicalist policies of the New Deal.

Mr. Taylor's chief aide, Paul Dempsey, was quoted in The Wall Street Journal: "All we really want to do is follow the congressional intent." Since Congress speaks with many voices, however, this gives a lot of leeway to Taylor and Dempsey. As "commander in chief" of the enforcement arm of the I.C.C. what can we expect of Mr. Dempsey? His personal philosophy about the free market and regulation was disclosed two years ago in an article he wrote for the Transportation Law Journal, "The Rise and Fall of the Civil Aeronautics Board." Instead of looking at the deregulation of airlines as a progressive step, Dempsey wrote:

"In the author's opinion, the blind application of such a regulatory policy satisfies the definition of fanaticism. Pandora's box has been opened wide. Thousands of segments of operating [sic] have been created for virtually any entity willing to file an application. Like a pack of ravenous sharks, the CAB has attacked its prey in a deregulatory frenzy. The ultimate tragedy, however, may well be that communities, carriers, and passengers must suffer the irresponsible and ill-conceived policies of a misguided majority of the CAB." [p.175]

"Blind fanaticism" might better describe someone who stoops to language such as the language used above in a scholarly journal. One can almost state the rage of a lawyer whose prospects of collecting fees for representing clients before the regulatory agency are diminished by deregulation. Both Reese Taylor and Paul Dempsey were highly paid attorneys before assuming their new jobs at the Interstate Commerce Commission.

Where do Mr. Andre and Mr. Sterrett stand on the issues of deregulation? Will they vote to give Mr. Dempsey more power in his role as chief enforcer at the I.C.C., or will they vote to restrain his regulatory fanaticism?

The advocates of regulation always begin with the premise that something is wrong with the free market. They usually look for cases that have some popular appeal, such a rural poverty or unattractive working conditions in factories, before proposing government action as the solution; but the popular issues used to sell regulation are not the starting point.

The underlying theory of a regulated economy is that a deliberate plan can be drafted to improve society beyond anything Adam Smith's "invisible hand" could come up with. Interesting as this philosophical issue may be, however, its most important corollary for the debate about deregulation—and the central question for these new members of the I.C.C.—is the political question: Who shall benefit?

Paul Dempsey set forth his theory of regulation in his article, cited above:

"Many remote communities are concerned that the deregulation of surface transportation may eliminate the obligation of trucking companies to provide essential service. Clearly, there is more at stake than the sanctity of the laws of the marketplace. There is a public interest in assuring that the fundamental ingredients of economic growth are abundant in all regions of our nation, so that the fruits of such growth might be enjoyed by a larger segment of the population. This is, of course, a distribution of wealth concept. A geographic disbursement of economic growth offers the potential for a more equitable distribution of regional growth rates. Moreover, by removing industry from the concentrated urban areas where the industrial revolution was born, the quality of life might ultimately be improved as workers, by following industry like a magnet, enable population to become more geographically disparate." [p. 179n]

Some of the Congressmen and Senators who represent Northeastern States, with "concentrated urban areas where the industrial revolution was born," might have a different opinion than Dempsey about the desirability of using regulation for social engineering.

Who benefits from regulating the free market, turning it by degrees into an unfree system? Is it reasonable to say that "society benefits"? Only a moment's reflection is needed to understand that "society" is not an entity separate and distinct from the market, where each participant engages in both production and consumption. Nor does "government" benefit from regulation, unless by "government" we mean something quite different from the textbook definitions of a democratic society.

In a regulated market some people benefit at the expense of others. Politicians benefit, too, when the special interest groups make campaign donations to reward them for voting correctly. Millions of consumers are made a tiny bit worse off, so that a privileged elite can become rich from a distorted, regulated market.

Among those who benefit the most from government regulation are Washington lawyers. An artificial demand for services has been created in the Nation's capital for lobbying and lawyering services. A recent U.S. Commerce Department survey

indicates Washington lawyers are collecting nearly $1 billion in legal fees annually. Washington has about one percent of the law firms in the Nation, but these lawyers get nearly four percent of the annual income of the profession.

Mr. Paul Dempsey, while at the University of Denver, was an indirect beneficiary of this redistribution of wealth. The Motor Carrier Lawyers Association testified before this Committee at confirmation hearings in 1979 that it has assisted the University of Denver financially with various studies of trucking deregulation.

Finally, the issue of equity in the free market ought to be addressed. The free market is the only way to assure fairness and equity, contrary to the views of Mr. Taylor and Mr. Dempsy. The case of Hohenwald Truck Lines in rural Tennessee is instructive. After the Motor Carrier Act of 1980 was passed, some 20 big trucking firms started offering service in its territory. To compete, Hohenwald applied for rights to haul all commodities between eight counties in Tennessee and the rest of the country. Last December, it received temporary operating right and borrowed $779,000 to expand its truck fleet and build seven new terminals in the South and Midwest. On July 10, 1981, however the I.C.C. rejected Hohenwald's application for permanent operating rights—so much for Dempsy's theory of a "geographic disbursement of economic growth," which amounts to imposing hardships on those not well-connected.

Before coming to the Chairmanship of the I.C.C., Mr. Taylor was instrumental in preventing Las Vegas taxicab drivers from obtaining the legal right to own and operate their own cabs. According to the Las Vegas Sun, he said the proposed State legislation to allow more competition in taxi services would be "terribly unfair" to fleet owners! What about the little guys who might want to be self-employed as owner-operators? This is out-and-out economic royalism!

The Council for a Competitive Economy appears at these hearings today to ask the gentlemen who are here under review to become the newest members of the Interstate Commerce Commission where they stand on the issues of competition—and equity and fair play for companies like Hohenwald Truck Lines.

Do they stand for economic efficiency in our Nation's transportation system, or do they (secretly) represent the Washington lawyers who earn their living off of procedures and hearings before I.C.C.?

Do these appointees of President Reagan stand for the philosophy of the free market, as the President is widely recognized to hold it, or do they stand for the privileges of organized labor and organized commercial interests, who tremble at the prospect of a free and competitive economy?

Thank you, Mr. Chairman.

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